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ATTACHMENT A
Remarks

Claims 1, 10-26, 30, 31, and 39-67 are now present in this application. Claims 1, 10, 24, 30, 31, 39, 40, 48, and 52 were rejected as being obvious in view of the Ralph, et al U.S. Patent No. 6,478,801 ("Ralph"). All of the remaining claims still present in this application have either been allowed or indicated as being allowable in substance and/or allowable subject to correction of the § 112 rejection.

Thus, (apart from the § 112 rejection which will be commented on below), these Remarks are directed primarily to the rejection under § 102(e) of claims 1, 10, 24, 30, 31, 39, 40, 48, and 52; and more specifically, these comments will be directed to the allowability of the four rejected independent claims 1, 24, 30, and 48. Upon allowance of those claims, all their respective dependent claims will also be allowable.

Initially, Applicant respectfully submits that the Office Action of May 23, 2006 was prematurely made final. Under § 706.07(a) of the MPEP, when the examiner introduces a new ground of rejection, finality is not appropriate unless the applicant's response necessitated the new ground of rejection. In this case, two of the four rejected independent claims, namely independent claims 30 and 48, were not amended in the last response. Hence, finality of this Office Action is premature. Accordingly, if the amendments submitted herein do not result in allowance of this application, it is respectfully requested that the Examiner withdraw the finality of the action so that this Amendment will constitute a complete response to the Office Action.

Applicant wishes to thank the Examiner for the courteous telephone interview conducted between the Examiner and the undersigned on Monday, October 16, 2006.

During that telephone interview, the undersigned submitted to the Examiner amended claims 1, 24, 30, and 48 (which were transmitted by facsimile so that they could be considered during the interview). Claims 1, 24, and 48 herein are the same as submitted in the interview. Claim 30 remains unchanged because it was decided not to amend claim 30.

During the interview, the Examiner agreed that these amendments would be entered, although he indicated that upon the filing of an Amendment, he would further consider the claims, Applicant's arguments, and possibly conduct an additional search.

For the following reasons, claims 1, 24, 30, and 48 are believed to be allowable, thereby placing this application in condition for allowance.

Each of the independent claims 1, 24, 30, and 48 relate to the concept, instrument and method, of engaging recesses in the top and bottom, or upwardly and downwardly facing surfaces of the implant for securing same.

The Ralph et al U.S. Patent No. 6,478,801 is a total departure from the concept of the present invention, and more specifically, a total departure from the present invention as recited in the claims.

The implant of Ralph, referring for example to Figures 2a-2c, has no structure whatsoever in the top or the bottom in the nature of any kind of recess for receiving an instrument. Moreover, it is quite clear in Ralph that the upper surface as shown in Figure 2a, with no recess, is in fact the top and that the lower surface opposite from this top surface, also with no recess, is the bottom. See for example the figure description of Figures 2a-2c at the bottom of column 10. It is equally clear that all of the structure

for receiving any kind of holding instrument is shown only in the form of a circumferential groove formed into the lateral sides of this implant.

The more relevant disclosure of the instrument is Figures 8a-8c. As shown in Figure 8c, this instrument engages only the lateral circumferential groove. In contrast, Ralph shows no upper or upwardly facing recess, no lower or downwardly facing recess and no top and/or bottom with a recess. Instead, it includes only a totally different lateral circumferential groove recess. The instrument shown in Figures 8a and 8b therefore, as shown in Figure 8c, engages only the lateral circumferential groove, not any upwardly or downwardly facing recess.

It is believed that claim 30 as well as claims 1, 24, and 48, in their previous form clearly defined an invention which was neither anticipated nor rendered obvious by Ralph.

For example, previous claim 1 included a pair of arms constructed to close towards each other to enter recesses in the top and bottom of the implant. This is patentably distinct from Ralph which has no such recesses in the top or bottom of the implant and thus cannot have arms constructed to enter recesses in the top and bottom of the implant. Nonetheless, in order to advance the prosecution of this application, Applicant has now amended claim 1 in the introduction thereof to give a frame of reference to the words "top" and "bottom" so that the recitations of top and bottom in the body of the claim following the preamble now have a more specific meaning which cannot possibly be considered as anticipated or rendered obvious by the laterally sideways engaging tool of Figures 8a and 8b of Ralph.

The amendments to claim 1 also overcome the rejection of claim 1 under § 112.

Claim 24, in its previous form, also distinguished an unobvious invention over Ralph. First, in addition to reciting a pair of arms which close towards each other to secure the implant, claim 24 recited an implant of the type having upper and lower parts, plus the upper and lower arms being constructed to close towards each other not just to hold the implant but to secure the upper and lower parts. By contrast, Ralph does not disclose an implant of the type having separable upper and lower parts and therefore cannot possibly anticipate or render obvious recitations of arms which close towards each other to secure upper and lower parts of the implant. While previous claim 24 is believed to distinguish in a patentable sense over Ralph, claim 24 has now been amended to recite that the arms move in a vertical direction towards each other for securing the upper and lower parts and vertically away from each other to release the instrument from the implant. (The last paragraph of previous claim 24 has been deleted in order to avoid redundancy.) Consequently, it is respectfully submitted that claim 24 is neither anticipated nor rendered obvious by Ralph.

Previous claim 30 also distinguishes a patentable invention over Ralph. As a method claim, the Examiner is required to give patentable weight to the material worked on, in this case the features of the implant. Thus, the recitations in claim 30 of the upwardly facing upper recess and the downwardly facing lower recess are an integral part of the claim which was necessarily disregarded in rejecting this claim as anticipated or rendered obvious by Ralph. As such, the previous rejection of claim 30 was totally erroneous.

During the telephone interview, Applicant submitted amendments to claim 30. However, upon reconsideration, for the reasons described in the preceding paragraph,

method claim 30 is so clearly patentable over Ralph that no further amendments to claim 30 are being made.

It is believed that previous claim 40 also distinguished patentably over Ralph because it recited upper and lower parts, which are completely absent from the one piece implant of Ralph, and claim 40 also recited securing these parts with upper and lower arms. Nonetheless, in order to advance the prosecution of this application, claim 40 has now been amended to recite that the upper and lower parts are separable from each other which is of course a total departure from Ralph which shows only a one piece implant. Hence, claim 48 is clearly patentable over Ralph.

In view of the above, it is respectfully submitted that this application is now in condition for allowance, which action is promptly and respectfully solicited.

END REMARKS